

Inventor: Howard Preissman
Application No.: 09/828,539
Reply to OA of 11/16/2005
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REMARKS

Re. The Office Action

Of pending Claims 33-44 and 46-53, Claims 33-39 and 46-53 were withdrawn from consideration.

By the Office Action, Claims 40-44 were rejected under 35 U.S.C. §103 (a) as being unpatentable over U.S. patent no. 5,258,028 to Ersek et al. ("Ersek") in that although Ersek does not disclose the Applicant claimed particle sizes, Ersek discloses a flowable matrix and radiopaque particles having a size range between 30 μ and 3000 μ and, also, Ersek teaches variations of particle size within the a group of particles. Thus, according to the Office Action, it would have been obvious to have particle sizes that fall within the Applicant's claimed size groupings, for the reasons set forth in the Office Action.

In response, Claims 40-44 are amended, and Claims 54-71 are added as discussed below. Thus, Claims 40-44 and 54-71 are now under consideration.

In view of the present amendments and the reasons herein, it is believed that the claims are patentable; therefore, reconsideration and allowance of the Application is respectfully requested.

Re. The Amended and New Claims

1. Claim 41 is amended to specify:
 - (i) radiopaque tracer particles as disclosed for example at page 7, line 25 and ff of the Specification;
 - (ii) radiopaque contrast particles as disclosed for example at page 6, line 22 and ff of the Specification;
 - (iii) that the contrast particles enhance the visibility of the matrix, as disclosed for example at page 7, lines 14 and ff of the Specification;
 - (iv) that the tracer particles visibly indicate flow of the matrix as disclosed for example at page 8, line 21 and ff of the Specification;

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2. Claims 41- 44 are amended to include "tracer", as set forth in Claim 41.
3. Claims 54 and 64 are based on, for example, page 3, line 26 and ff of the Specification.
4. Claims 55 and 65 are based on, for example, page 4, line 10 and ff of the Specification.
5. Claims 56 and 66 are based on, for example, page 4, and line 19 and ff of the Specification.
6. Claim 57 is based on, for example, page 4, line 22-23 of the Specification.
7. Claim 58 is based on, for example, page 3, line 26 of the Specification.
8. Claim 59 is based on, for example, page 3, lines 16-17 of the Specification.
9. Claim 60 and 67 are based on, for example, the Examples on page 11 of the Specification.
10. Claim 61 is based on, for example, page 9, line 22 and ff of the Specification.
11. Claim 62 is base on the disclosure generally and the description at page 8, lines 12-13 of the Specification.
12. Claim 63 is based, on for example, language in Claim 40 and the disclosure in general.
13. Claims 68-71 are based for example on language in Claims 41-44.

At least for the following reasons the claims as amended are patentable, and therefore reconsideration is respectfully resisted.

A described in the Specification at page 2, lines 13- 23, for purposes of tracking the flow and leading edge surface of implant material during injection, or for viewing small volumes of implant material, contrast agent presently used are inadequate. Since it is important during an implantation to be able to view the path taken by the implant material, an improvement in the visibility of implant material during injection is needed. See page 2, lines 17-23.

Thus as described it the Specification starting at page 3, line 16, and as set for the in the claims, the Applicants' implant material comprises in one embodiment an injectable composition comprising, a flowable matrix, radiopaque tracer particles in the flowable matrix, the radiopaque

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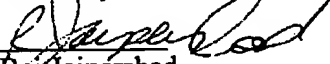
tracer particles having a size between about 350 μ and about 2200 μ and present in an amount so as to be individually visible during implantation; and radiopaque contrast particles having a particle size 350 less than μ wherein the contrast particles enhance the visibility of said matrix, and said radiopaque tracer particles visibly indicate flow of said matrix during implantation.

In this regard it is not believed that the Applicants' composition is disclosed and or suggested in the prior art including the teaching of Ersek, as no such art is known wherein a composition is formulated that addresses the need to (i) view the leading edge of the matrix, and or (ii) track the flow of the implant, to avoid the problems encounter in the art during implantation, as disclosed in the Specification for example at page 2, lines 4-23.

SUMMARY

All claims are patentable and are in condition for allowance. Accordingly, reconsideration and allowance of the Application is respectfully requested. If an issue remains that can be resolved by telephone, kindly contact the undersigned at (408) 735-6486.

Sincerely,


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